

**DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS**

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DISTRICT OF COLUMBIA
DEPARTMENT OF THE ENVIRONMENT

Petitioner,

v.

GOBIND & KABIR, INC.
DBA G AND K GAS AND DELI
Respondent.

Case No.: 2011-DDOE-A400003
NOI No.: DE-I-11-A400003

FINAL ORDER

On January 21, 2011, the Government served Notice of Infraction No. DE-I-11-A400003 (the "NOI") upon Respondent Gobind & Kabin, Inc. dba G and K Gas and Deli. The NOI charged Respondent with five violations of 20 DCMR 705.10 (the "Regulation"), for failure to maintain its vapor recovery system at five different pumps, on September 28, 2010, at 1248 Pennsylvania Avenue, SE (the "Premises"). The Government seeks a fine of \$200 for each violation, for a total fine amount of \$1,000.

On February 11, 2011, Respondent filed an answer of Admit with Explanation to the five charges, together with a request for suspension or reduction of the fines. Consequently, on March 29, 2011, this administrative court issued an Order permitting the Government 21 days in which to reply to Respondent's request. On April 20, 2011, the Government filed a reply. The Government opposes Respondent's request based on the significant time and resources it expended and the high percentage of equipment in violation.

Based on the entire record in this matter, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns and operates a Sunoco gas station franchise at the Premises. Sunoco owns the Premises and is responsible for making repairs at the Premises. There are six gas pumps at the station. On September 28, 2010, a Department of Environment inspector inspected the Premises, at which time he found torn or cracked hoses on five gas pumps. Within 72 hours of the inspection, Sunoco repaired the hoses.

III. Conclusions of Law

The Government has charged Respondent with five violations 20 DCMR 705.10, which provides as follows:

The operator of a gasoline dispensing facility shall take the actions necessary to ensure that all parts of the system used at the facility for compliance with the section are maintained in good repair, and to ensure that any person, whether attendant, customer, or other, who uses the facility, does so in accordance with proper operating practices and otherwise in compliance with the requirements of this section.

Respondent's pleas of Admit with Explanation establish that it violated the Regulation on September 28, 2010, as charged in the Notice of Infraction.

Respondent's assertion that the Sunoco corporation is responsible for maintaining the gas pumps does not relieve him of liability for the violation. The Regulation places responsibility for compliance on the "operator of a gasoline dispensing facility." 21 DCMR 705.10. An "operator" is a person who leases, operates, manages, supervises, or controls a gasoline

dispensing facility. 21 DCMR 705.11. Therefore, it is Respondent who is responsible for complying with the Regulation.

The District of Columbia Municipal regulations prescribe a \$200 fine for a first violation of the Regulation, which is the fine amount requested by the Government for each violation. 16 DCMR 3637.4(m); 16 DMCR 3201.1(d)(1); and, 16 DMCR 3201.7.

However, Respondent has requested that the fines be suspended or reduced. This administrative court may suspend all or part of a fine for, among other things, past compliance or past good faith attempts to comply with applicable laws and regulations, or upon condition that the respondent correct the infraction by a date certain. D.C. Official Code § 2-1801.03(b)(6).

Respondent has demonstrated acceptance of responsibility by entering pleas of Admit with Explanation, but only nominally and fairly late in the case. Respondent also has failed to demonstrate past compliance. Based on the number of pumps in disrepair, it appears that Respondent failed to maintain the pumps over a protracted period of time. Further, it appears that but for the Government's inspection, the pumps would have continued to be maintained in poor repair and to emit vapor, which is a hazardous air pollutant. Respondent's failure to ensure that the pumps were maintained in good repair is troubling in view of Sunoco corporation's prompt repair of the pumps after Respondent received the NOI. Based on the serious, protracted nature of the violation, including the high percentage of equipment that was in violation at the Premises, and in deference to the enforcing agency, I will impose the full fine amounts requested by the Government, for a total fine amount of \$1,000.

Accordingly, it is this 22nd day of April 2011:

IV. Order

ORDERED, that, based on its pleas of Admit with Explanation, Respondent is **LIABLE** for violating 20 DCMR 705.10, as charged in the Notice of Infraction; and it is further

ORDERED, that Respondent is hereby assessed and shall pay a fine in the total amount of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days for service by mail pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, shall accrue on the unpaid amount at the rate of 1½ %, or portion thereof, starting 20 calendar days after the mailing date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

April 22, 2011

_____/s/_____
Elizabeth Figueroa
Administrative Law Judge